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INAMS IN THE MADRAS PRESIDENCY*

For the purposes of this paper, an inam may be defined as a grant of land by a former ruler or a Zamindar prior to the Permanent Settlement. An apparent exception to this definition will be dealt with at the end of this paper.

Such grants, when made by Zemindars were unauthorized and the State was not bound to recognise them. When the British Government, in the exercise of the immemorial and common law prerogative of the Crown in India to assess land or to exact from arable land its share of the produce (see *Boddupathi Jaganaudhan* v. *Secretary of State for India* [1], *Madathapadu Ramayya* v. *Secretary of State for India* [2]) proceeded to settle the Zamindaries permanently in 1802, the question arose as to how these inams were to be dealt with.

From this point of view Inams may be divided into four classes. There were (1) Inams granted for public purposes *e.g.*, to village servants in proprietary estates for performing services in which the public are interested, (2) Private or personal inams granted absolutely to the grantees, (3) Inams granted for religious or charitable purposes,

(4) Inams granted for rendering personal or private services to the Zamindars. We shall take these in order.

(1) ***Hereditary village service Inams.***—These were excluded from the assets of the Zamindari and the Zamindar had no concern with their revenue which was treated as the emoluments of the particular office to which each inam was attached. In other words, they were annexed to the State.

(*a*) ***The office of Karnam.***—This was regulated by s. 11 of Reg XXV of 1802 and Reg XXIX of 1802. Suits respecting the right to this office and the right to the inams attached to the office were (prior to 1894) cognisable by Civil Courts.

* Being the substance of a lecture delivered to the Apprentices Association by Mr. V. Rameeam B.A., B.L., High Court Vakil.

1. (1902) I. L. R. 27 M. 16. 2. (1913) I L. R. 27 M. 386.

(*b*) *Other village offices* in the Police and Revenue Departments were dealt with by Reg. VI of 1831 and the claims to these offices were adjudicated upon by Revenue Courts. Claims to such offices were not affected by the general law of limitation (Vide *Pichunayyan* v. *Vilakkudayan Asari* [1], *Palamalai Padayachi* v. *Shunmuga Asari* [2]).

The above regulations have been replaced by Madras Act II of 1894 so far as the offices of village Karnam, village Munsif and village Headman are concerned and in respect of all other village offices, Reg. VI of 1831 is repealed by Madras Act III of 1895. After the Full Bench decision reported in *Kandappa Achari* v. *Vengama Naidu* [3], there is no village office in proprietary estates (other than those governed by Madras Act II of 1894) which is not governed by Madras Act III of 1895. The last mentioned case settled the conflict between *Veerabudran Achary* v. *Suppan Asari* [4]; *Chinnayya Achary T.* v. *Mooniappa Mudali* [5] on the one hand and *Mutyala Bapayy* v. *Kosuri Murramalla* [6] on the other. See also *Audiraju Veerayya* v. *Audiraju Sangayya* [7]. Under S. 17 of Act II of 1894, such of the village service inams as were not enfranchised in 1862, have been resumed and enfranchised and have ceased to be attached to village offices as their emoluments.

(2) *Personal Inams.*—These were excluded from the Permanent Settlement. They were either lakhiraj *i.e.*, held free of any payment or subject to the payment of a small quit-rent—also called Kattubadi, jodi or poruppu.

Where the grant was subject not to a light quit-rent but to a heavy payment, it is clear that the amount paid was rent and the grant can scarcely be called an inam. It would be a permanent lease. Hence all lands held rent-free or subject to a light quit-rent were excluded from the assets of the Zamindari (S. 4 of Reg. XXV of 1802). The matter of recognition of these grants remained for a long time in abeyance. In 1859, the Inam Commission was constituted. Such of the inams as were found to be *bona fide* grants were enfranchised and a quit-rent imposed on them. The amount of quit-rent varied according to the

1. (1897) I. L. R. 21 M. 134.
2. (1892) I. L. R. 17 M 302 F. B.
3. (1913) 24 M. L. J. 42.
4. (1909) I. L. R. 33 M 488.
5. (1909) M.L.T. 264.
6. (1910) M. W. N. 7.
7. (1910) I. L. R. 34 M. 177.

history of the Inam and was regulated by the rules of the Inam Commission. The work of the commission was legalised by Madras Act IV of 1862, and IV of 1866 and Act VIII of 1869 was passed to remove misconceptions as to the effect of enfranchisement and the issue of title-deeds by the Inam commission.

What exactly was the effect of an enfranchisement, how far it affected prior rights in the land was a matter which long agitated courts but is now finally decided by *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya* [1]. For sometime, a distinction was sought to be drawn between Service Inams and other personal inams. That distinction too is no longer recognised. The important question whether the holder of a service inam holds it, after enfranchisement, as joint-family property or as self acquired property was argued in more than one case before the Madras High Court but no opinion has been expressed on it. The observations on this matter in *Gunnayyan* v. *Kamatchi* [2] can scarcely be said to settle the question.

Where the Inam was granted subject to the payment of a Kattubadi to the zamindar, the inamdar had to make two payments, as the result of the enfranchisement proceedings—*viz* (1) Kattubadi to the Zamindar and (2) Quit-rent to the Government. It is clear that in such a case, the Government gets two payments from the inam—*viz.*, (1) the quit-rent from the inamdar (2) that portion of the peishcush which is referable to the Kattubadi obtained by the Zamindar from the inam, which Kattubadi was included in his assets at the time of the Permanent Settlement. The Zamindar got the Kattubadi from the inamdar and paid peishcush to the Government.

The nature of Kattubadi has been discussed in various cases. It follows from what has been said above that, strictly, there is no tenure as between the Zamindar and inamdar· *In an enfranchised inam, the Zemindar has no reversion.* There is no relationship of landlord and tenant. *Lakshminarayana Pantulu* v. *Venkatarayan* [3]; *Nallayappa Pillai* v. *Ambalavana* [4]. The burden of paying the Kattubadi follows the inam but it is not a charge on the land and more than three years' arrears cannot be recovered *Vizianagaram Maharaja* v. *Sitaramarazu* [5], *Rathna Mudaliar* v. *Thiruvenkatachariar* [6]. By special legislation, however, for

1. (1906) I. L. R. 30 M. 434.
2. (1902) I. L. R. 26 M. 339.
3. (1897) I. L. R. 21 M. 116 F. B.
4. 1903 I.L.R. 27 M. 465.
5. (1895) I. L. R. 17 M. 100.
6. (1899) I. L. R. 22 M. 351.

certain purposes, it may partake of the character of rent, *e.g.*, for the purposes of Ss. 38 and 39 of the Rent Recovery Act (*Muthusami Pillai* v. *Arunachella Chettiar* [1] and cf. the repealed clause (*c*) of S. 3 (ii) of the Madras Estates Land Act.) As to the amount recoverable as jodi, see *Sobhanadri AppaRau* v. *Gopalakrishnamma* [2].

Where the inam is not subject to Kattubadi, but is Sarva dumbala, the payment is all to the Government and none to the zamindar.

(3). If the inam was granted for religious purposes (as endowment of temples or mosques) or for charitable purposes (as endowment of choultries) the inam would be allowed to be held free of quit-rent so long as the purpose of the grant is fulfilled. When the purpose fails, the Government steps in and assesses the inam fully.

In the case of temple inams, an important distinction may be mentioned. The inam may simply be the property of the temple,in which case, the deity or the idol may be regarded as the inamdar or it may be the property of a temple servant held subject to rendering service to the temple as an archaka or a dancing girl. In the former case, the grantee is the idol represented by the trustee, in the latter case, the grantee is the temple servant; in the former case the grant is not subject to service, the inam being merely the property of the idol; in the latter case the inam is held by the inamdar subject to rendering service to the temple. In either case no quit-rent is imposed so long as the purpose of the grant is fulfilled.

In practice, it often happens that the archaka of a temple is or was also the trustee and it is a question of some nicety to determine whether a land in the enjoyment of the archaka is the temple land, managed by the archaka as trustee, or archaka service-land held by the archaka subject to rendering archaka service to the temple. In the former case, if a person different from the archaka is appointed trustee, he is entitled to dispossess the archaka and hold the land for the temple, making separate arrangements for remunerating the services of the archaka. In the latter case, the archaka is entitled to hold the land so long as he is the archaka. A *prima facie* test is whether the inam title deed mentions the archaka or the idol as the grantee.

1. (1905) I. L. R. 29 M. 79. 2. (1891) I. L. R. 16 M. 39.

(4) Where the inam was granted for private service to be rendered to the Zamindar, the presumption is that it was included in the assets of the Zamindari. Even when the services are dispensed with or fall into disuse, the Government have no right of assessing it (Vide the observations of Sir Barnes Peacock in *Raja Nilmony Singh Deo* v. *The Government and others* [1] approved by the P. C. in *Raja Nilmony Singh* v. *Bakranath* [2]) Whether the Zamindar can resume service inams depends on other considerations (see *Venkata Narasimha Appa Rau* v. *Sobhanadri* [3] but the Government cannot certainly resume the inam *Raja Venkataramayya* v. *Appalarazu* [4] followed in *Parthasarathi Apparao* v. *Secretary of State* [5]. Where the inam was an absolute grant to the Inamdar[9] subject to service and the service falls into disuse, the Zaminadar has only the satisfaction of having made a generous grant and has no right to resume the grant. Most of the Mokhasas in the Nuzvid Zamindari are of this nature. This was settled by a report of Mr. Taylor in 1862 and G. O. accepting his report See *Raja Venkatanarasimha Appa Rao* v. *Raja Rangayya* [6].

If, at this distance of time, a question arises whether a Mokhasa village or other inam grant was held on condition of public service or private service, in all cases where the services have fallen into disuse, the question is difficult to determine. Still the question has to be decided. If the services were public the State is at liberty to deal with it anyway it chooses *i. e.* either leave it in *statu quo* or put an end to the service once for all and resume the land *i. e.* assess it to revenue. If the service was private, the State has nothing to do with it. Such revenue as the State is entitled to get from this land in virtue of the Common law prerogative, was fixed long ago in 1802 and year after year it continues to get it as part of the peishcush imposed on the Zamindari. The question whether the service is public or private and the question whether the land was excluded from the assets of the Zamindari or included are mutually convertible questions. Each furnishes a test for deciding the other and whatever can be answered first presumably furnishes a key to unlock the mystery of the second. If the Government which is in possession of the accounts of 1802 showing the estimated

1. (1866) 6 W. R. 121 C. R.
2. (1883) I. L. R. 9 I. A. 109.
3. (1905) I. L. R. 2 M. 52
4. (1910) 20 M. L. J. 728.
5. (1913) 21 I. C. 871
6. (1906) I. L. R. 2 M. 437.

income of the zamindaries produces them, it is possible to answer the 2nd question but where the accounts are not available the first question has to be tackled as best as one can. In such a case, the burden of proof lies on the Government to show that the income of the land was excluded from the assets of the zamindari.

Where a *Zamindar* grants an inam subject to service or kattubadi or both out of the *Zamindari*, the land continues a part of the *Zamindari* so far as the Government is concerned (see S. 8 of Reg. 25 of 1802). Until it is subdivided, the Government is entitled to attach it for arrears of peishkush on the *Zamindari*. In common parlance such grants are called subsequent or Darmila Inams. It is clear they are no inams at all. They stand on the same footing as the Mokhasas dealt with in (4) supra both being part of the *Zamindari* for all practical purposes. Where such grant or Mokhasa is a whole village, it will fall under clause (e) of S. 3 (2) of the Estates Land Act and under clause (e) of S. 4 of Madras Act II of 1894. But if it is not a whole village it will be a portion of an estate as defined in clause (a) of the same section mentioned above and the owner of such land will be a landholder within the meaning of S 3 (5) of the Estates Land Act (see 17 I. C. 120). If the Mokhasa village or subsequent inam is subdivided, it will fall under clause (b) of the section mentioned above.

It has been held that where a subsequent inam is granted subject to kattubadi, the *Zamindar* is not entitled to have it subdivided with the burden of the proportionate part of the peishcush for it is an implied term of the grant that the grantee shall not be liable to any burden other than the kattubadi imposed (See Miller and Munro JJ in A. S. 141 of 1905, 20 M. L. J. N. R. C. 32).

NOTES OF INDIAN CASES.

Lala Soni Ram v. Kanhaiya Lal.—I.L.R. 35 A 227 P.C. 25 M.L.J. 131. The decision of their Lordships in this case requires to be carefully studied as it is easy to make mistakes as to the points decided and take it to lay down considerably more than it actually does. The principal point was as to the effect of a limited owner's acknowledgment, whether the acknowledgment by the widow (and the daughter) of the mortgagee in the circumstances of the case saved the mortgagor's suit from the bar of limitation.

The acknowledgment was contained in a deed of sale of the property in question which was found to be not binding on the reversioners. Upon these facts, their Lordships held that the acknowledgment did not bind the reversioner. Their Lordships' judgment proceeds on the ground that neither the widow nor the daughter was a person from whom the reversioners derived the liability to be redeemed, the original mortgagee being the male owner. Whether in a proper case, acknowledgment by the limited owner may not save the bar of limitation as one "by an agent authorised in that behalf" or whether there may not be cases where it may properly be said that the reversioner derives liability from the widow their Lordships did not and had not to consider. If the acknowledgment was for the benefit of the estate, so far as one can judge from what their Lordships say at the top of page 235 their inclination seems to be to hold that it would bind. The Madras High Court as well as the other courts have construed the words "agent authorised in that behalf" in S. 19 so as to include managers of Hindu families, guardians, and others in charge of a person's estate. This view has had legislative sanction in S. 21 of the new Act. To extend the words so as to cover the widow's case also, would require no more violent strain on the language used. This would seem to be specially necessary in the case of husband's debts where the widow has larger powers than even the managing member. On the facts of the principal case, their Lordships having held that acknowledgment did not confer title, it was not possible to hold that the reversioner derived liability from the widow. But if we take cases in which the widow herself makes an investment of the husband's money or incurs liability on behalf of the husband's estate, there is no reason why the reversioner should not be bound as a person deriving liability from the widow. It is possible perhaps to distinguish the case of debts as one of subrogation to the widow's right of resort to the husband's estate which might be taken to continue till the debt is extinguished, though that is not the ground on which the reversioner's liability has been generally put. But in the case of rights acquired by her, we cannot help adopting the one or the other theory, the theory of agency or the theory that the reversioner is a representative of the widow. We have precedent for the latter view in the Sivaganga case, [1] *Musala Reddi* v. *Ramaya* [2]

1. 9. M. I. A. 539, 604.

2. (1899) I. L. R. 23 M 125.

Premmoyi Choudhrani v. *Preonath Dhen* [1], *Mahadeo Singh* v. *Sheo Karan Singh* [2].

Whether a difference should be made between acknowledgments made directly for the benefit of the estate and where the acknowledgment is made in a deed executed for the benefit of the estate of which it forms a natural part, is a subtlety which we need not pursue. On the whole, we should think that the Privy Council decision is not an authority for the broad proposition that a widow's acknowledgment will under no circumstances bind the reversioner.

One or two other points on which their Lordships have given decision also require to be noted. One is as to suspension of the bar of limitation by reason of fusion of interests. Their Lordships negative the possibility of any such theory of suspension that being against S 9. Their Lordships do not, of course, decide whether in a case of fusion which subsequently for one reason or other disappears, there may not be a revival. Their Lordships seem to be clear that if there is a revival, art 120 will apply to the case. Their Lordships are also clear that in the particular case, there was no fusion. Whether there would not be fusion in a case where the widow's alienation is partly valid; or where the right in question forms part of the consideration for a sale which is ultimately set aside as not being wholly binding has not been considered by their Lordships. That there can be revival in a proper case, apart from questions of equity in suits brought for possession of the estate from the alienee from the widow where the court can give relief, irrespective of limitation, is clear from their Lordships' decision in 12 M I A 244. There might be difficulty in stating when exactly the revival will take place. In the absence of a right to account or restitution, or of a legal or equitable right of refund, such a revival one should fancy, would not be upheld.

Another point of interest is that about the application of the Limitation act of 1877. Their Lordships have finally decided that on the question of acknowledgment, the governing statute is the statute at the time of the institution of the suit or proceeding. But this does not mean that the old Limitation Act will never be applicable. In cases where well known rules of interpretation preclude the application of the new Act the old Act will apply. See *Ramakrishna Chetty* v. *Subbaraya Aiyar* [3].

1. (1896) I. L. R. 23 C 636 2. (1918) I. L. R. 35 A. 481.
3. (1912) 24 M. L. J. 54.

Kasturi v. Chiranjilal.—I. L. R. 35 A 265.—In this case, their lordships upheld the validity of the marriage of a girl of 16 arranged by her maternal relations during a temporary stay with them, without the consent of the paternal relations who were her guardians and with whom she was residing by applying the doctrine of *factum valet*. The application of this principle involves the assumption that the rule of Hindu Law violated was an unessential rule. The distinction between what is essential in marriage and what is unessential is not unnoticed by the ancient writers though it is to be regretted that they do not give a comprehensive list of the essentials. Vignaneswara in his Chapter on marriage says contrasting marriage within forbidden degrees &c. with marriages of diseased girls &c., that while in the former case, no wifehood (*Bharyatwa*) arises, in the latter the marriage is improper though good. Similarly Kulluca says speaking of Saptapadi that by it there is Bharyatwa Nishpatti *i.e.*the attaining of wifehood. Neither, of these state gift by the relations as an essential. Naturally because while Saptapadi is the source of *Bharyatwa*, gift or *pradana* is only *Swamya Karana*, the thing that gives the husband property in the wife. The text of Narada required that in default of relations, the girl should take the permission of the King (Chap. XII, *v*. 21-22) but Vijnaneswara's view is (following the text of Yajnavalkya) that she may make the choice herself. (Acharadhyaya, V. 64 and commentary thereon). The consent was unnecessary where the father was guilty of delay in marrying. By such conduct, the father forfeited his ownership of the girl (Kanyayam Swamithvath Hiyathe). Swamithwa that these ancient writers refer to whatever its significance originally, now signifies nothing more than guardianship in civil law—as Kulluca says the wife becomes after the gift dependant on the husband and the dependence is only for preventing the wife from Akarya Karana—doing things that ought not to be done. In ceremonial law, this *swamya* may be of significance for the change of Gotra. Nirnaya Sindhu is of opinion that gift is for the purpose of change of Gotra. Change of gotra in the strict ceremonial sense is not of much consequence in determining the validity of the marriage. In the case of Asura marriage the view of Vijnaneshwara is that Sapindathwa for certain ceremonial purposes is not produced by it. Nevertheless the. marriage is perfectly good. On the whole, therefore, the view that consent of relations is an unessential detail seems to be right. But

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there is another aspect of the case to be considered. The joining of the specified relations in the ceremony is one thing; the necessity for the consent of the guardian is another. The latter is required because the minor is incapable of doing any valid act by herself.

Mother's case stands on a special footing and it is scarcely right to apply the rules as regards her to other and distant relations. As Hindu Law recognises defacto guardianship,it may be that marriage with the consent of a defacto guardian will be upheld in all cases in which a beneficial act by him might be upheld. Where however the person who arranges the marriage is neither the de facto nor the dejure guardian, the marriage would under the circumstances be only the act of the minor and it is submitted that the validity of the marriage would depend wholly upon the question whether marriage of the minor by herself would be valid. The Hindu law rule as to incapacity of minors to enter into transactions appears to extend only to Vyavahara. Manu Chap. VIII —163 and does not seem to extend to Achara. Even applying that rule, a girl above 16 would be perfectly competent to enter into marriage without the consent of any guardian. The fact that marriages like Paisacha are recognised seem to point to the validity of marriages being independent of fraud, minority or any other mundane circumstance. Still, as Mr. Justice Muthuswamy Aiyar says in 14 M. 316, if the marriage is wholly without authority, the Court may well regard it as a fraud upon the policy of marriage and may cancel it. One may venture the suggestion that in cases where according to Narada, a minor is like an embryo *i.e.*, till she is 8 which by the by is also the marriageable age, the act of marriage being by a person who in the eye of the law has no mental discretion ought to be held to be wholly invalid. In the analogous case of adoption, it has been held that adoption can be made only by a person who has attained mental discretion. See *Rajendra Narain* v. *Saroda Sundari*.

Ages of discretion for adoption and for marriage may be different. But 8 being the minimum age mentioned for marriage, courts may well take that as the age of discretion. After that, marriage arranged with the concurrence of the girl should be upheld unless the court finds it grossly detrimental

1. (1871) 15 W. R. 548.

to the interests of the minor. If the marriage is performed against the will of the girl, the proper view is to hold that the marriage is invalid.

Badri Prasad v. Abdul Kharim : I. L. R. 35 A. 254. With great respect, we think that this case supplies the necessary corretive to 20 A 532 (which was approved in 34 A 615). It was held in that case that a scribe signing as such may nevertheless be regarded as an attesting witness if he was present at the execution. Their Lordships point out that the rule is too broadly stated. The correct position according to their Lordships is that a person may be an attesting witness though he does not describe himself as such but that he cannot be an attesting witness unless he possesses the intention to subscribe as a witness—*the animus testandi.* Without that he might be a witness but would not be an attesting witness. In this case he had not described himself as a witness and had signed the document before the executant. From these circumstances their Lordships infer that he had no *animus testandi.* If the right conception of an attesting witness is that he should witness the execution and sign the document in token of it, (See *Sarur Jigar Begam* v. *Barda Kanta Mitter* [1]) it may be that a person that signs before execution can under no circumstances be regarded as an attesting witness. Under the English law, the *animus testandi* need not appear from the document itself but may be proved aliunde *Griffiths* v. *Griffiths* L. R. 2 P. and D. 300 and there does not seem to be any good reason to apprehend that the law is different in India. Under what circumstances a scribe may be regarded as an attesting witness is elaborately considered by Benson and Sundara Aiyar JJ in 24 M. L. J. 534.

Ishwaran Pillai v. Taregan : 26 M. L. J. 127. Having regard to the judgment of the Privy Council in 34 A. 63, the conclusion arrived at in this case seems to be undoubtedly right though we confess we cannot follow much of the reasoning of his Lordship Mr. Justice Tyabji. One S. executed a mortgage in favour of the defendant and reserved a portion of the consideration money with him for being paid to the plaintiff to whom he owed a debt. It was argued that the plaintiff

1. (1910) I. L. R. 37 C. 526 at 537.

was entitled to sue as the contract between his debtor and the defendant was for his benefit and reliance was placed on *Khwaja Muhammad Khan* v. *Husaini Begam* [1] His Lordship distinguishes those cases and applies the general rule that a stranger to the contract cannot sue. On exactly similar facts *viz.*, on an application by a mortgagee to recover the mortgage money from the purchaser of the equity of redemption personally because a portion of the purchase-money had been reserved with him for payment to them ortgagee, their Lordships of the Privy Council in I.L.R. 34 A. 63, held that the mortgagee could not take advantage of the agreement to which he was not a party and that he was not entitled to proceed against the latter personally. Whether or not one can agree with his lordship's view that S. 23 of the Specific Relief Act which governs only suits for specific performance can explain the judgment of the Privy Council in I. L. R. 32 All. 410 which was in a suit for money, this case puts the matter beyond controversy. But there was another ground on which the plaintiff put his case. That was that he was entitled to sue as a *cestui que trust.* It is here that we find it difficult to follow his Lordship. His Lordship's objection to treating the case as one of trust is that there is no transfer of property and therefore there was at best only an agreement to be a trustee and not an actual trust. For this purpose we may look upon the transaction from two points of view, one from the point of view that the mortgagor is the trustee and the other that the mortgagee is the trustee. In 17 C.W.N. 1143 the case was discussed from both the standpoints and their Lordships held that there was a trust. If the mortgagor is the trustee, the chose in action *viz.*, the defendant's undertaking to the mortgagor to make the payment would be the subject-matter of the trust and the mortgagor the author of the trust. The property is definite and the document being a registered one, there would be no legal impediment to holding that a trust was validly created. Suppose for instance the defendant had undertaken to pay the mortgagor the amount and the mortgagor had declared that the amount should go to the plaintiff. There would have been no difficulty in treating it as a good case of trust. The combination of the two clauses into one cannot make any difference. Taking it from the other point of

1. (1910) I. L. R. 32 A. 410. 2. (1913) 17 C. W. N. 1143.

view, the money allocated for the purpose would be the subject-matter of the trust, the mortgagee the trustee, and the mortgagor the author of the trust. The money having been transferred to the defendant, a valid trust may be taken to be created. To hold that the money should actually be counted out and then transferred, would be, we submit, an unnecessary techincality, (cf. the judgment of Chandavarkar, J. in 35 B. 403). There might be something in the objection if the hypothecation were given in return for a covenant by the defendant to pay in future and not for money, immediately exigible and reserved with the defendant for payment to the plaintiff. Notwithstanding that there is no legal impediment to inferring a trust, a trust cannot of course be inferred unless there are other facts which justify such inference. In the case of trust for creditors, till it is communicated and accepted by the creditors the trust is only for the benefit of the debtor and can be revoked by him. All that the Calcutta case says really is that where a benefit is intended for the creditor, the court ought to infer a trust and not stand on technicalities. It is one thing to say that there will be a benefit to the creditor by the performance of the obligation ; it is quite another that a benefit was intended for the creditor. *Prima facie,* when a debtor pays the debt or arranges for its payment he is not thinking of conferring a benefit on the creditor but is only trying to discharge himself from liability. Unless the creditor is a party to the arrangement or unless there are special reasons for thinking that a benefit was really intended for the creditor (this would happen when the debtor is in insolvent circumstances and wants to prefer a particular creditor) it is wrong to infer a trust. This view is supported by the conclusion in the Privy Council Case though their Lordships do not consider the question from the aspect of trust ; it cannot be believed that Lord Macnaughten was unaware of it; the real reason why it was not considered must be because it was hopeless the case being one of an arrangement between the mortgagor and the purchaser with no special circumstances justifying the inference of trust.

SUMMARY OF ENGLISH CASES.

In re **Green : Bath *v.* Cannon** ; (1914) 1 Ch. 134.

Will—construction—Appointment of three persons as executors—Description as "nephews"—Devise to nephews and nieces—Whether the term nephews throughout the will to be construed to include these though two, only nephews by affinity.

A testatrix appointed three persons whom she called nephews as executors and gave her property to her "nephews and nieces equally." Of the three persons appointed executors, one was her nephew and the other two were her husband's nephews. It was contended on behalf of these latter that the testatrix having used the term in an extended sense in one part of the will must be taken to have used it throughout in that sense or at any rate to have used it so as to include themselves. Mr. Justice Sargant overruled this contention and held that the only persons that could take were her own nephews and nieces.

IN RE REPUBLIC OF BOLIVIA EXPLORATION. Syndicate, Limited: (1914) 1 Ch. 139.

Diplomatic agents and Ambassadors—Privilege from suit—Waiver of privilege—Company law—Auditor—Duties of—Liability of.

Two very interesting questions arose for decision in this case. First if the privilege of diplomatic agents accredited to the crown by a foreign state can be waived; secondly as to the duties of auditors. On the first question Astbury J held that except in very special circumstances the privilege cannot be waived and even if waiver is possible, it can only be with the sanction of the Sovereign concerned or at least the Legation, provided in addition that the party said to waive is shown to be aware of the privilege. His Lordship held that knowledge of Statute and Common law cannot be imputed to a foreign subject residing as a diplomatic agent of a foreign State and ought to be proved before any question of waiver could arise. On the other question, his Lordship held following the earlier cases that the auditor's duty was not merely to see to the arithmetical accuracy of the accounts but that he had a duty to satisfy himself as to their substantial accuracy. He had not only to call for vouchers but also to satisfy himself with reference to the articles of association that the alleged payments were not illegal. He was not bound to be suspicious but he had to proceed with reasonable caution. If the audited balance sheets do not show the true financial condition of the company and damage has resulted it is on the auditors to show that this was not the result of any breach of duty on their part. In this case, the auditors were sought to be made liable for three items. First a sum paid as commission for obtaining subscription for shares, second profit costs allowed to a solicitor director for

incorporation; third some amount shown as paid for the purchase of stores. As regards the first, a question was raised before the share holder's meeting as to the legality of the payment and it was approved. As regards the second, the Solicitor who was paid the profit costs was not a director at the time of the incorporation and the sum was entered as payable having been agreed though passed at a time when the solicitor who was paid was a director. As regards the third, there were no special circumstances raising suspicion. Under these circumstances, his Lordship held that the auditors were not liable.

Goldfort v. Welsh: (1914) 1 Ch. 213.

Lease—Construction—Demise of room—includes "outer wall"—Parol evidence—Admissibility of.

In this case, A demise "of the rooms of a business premises" was held *prima facie* to include the external walls. It was also held that parol evidence was not admissible to prove that there was no intention to demise the external walls.

In re Marshall; Marshall v. Marshall; (1914) 1 Ch. 92.

Trustee for sale—Power to postpone sale—Uncontrolled discretion—Persons absolutely entitled to beneficiary interest—Right to their interest transferred—Real property and personal property—Difference between.

Power to postpone sale conferred on trustees for sale is conferred on them for the benefit of the cesfui que trust and when the interests of the beneficiaries, as a whole does not require either the sale or the postponement of distribution it is open to any of the beneficiaries absolutely entitled, to call upon the trustees, to convey their shares to them and the fact that the trustees are given an uncontrolled discretion in the matter is no answer to such a demand. In the case of real estate, however, there is a presumption that a compliance with the demand for the delivery of an undivided share is likely to prejudice the estate. There is no such presumption as to personal property generally (mortgages being excepted).

Oram v. Hunt: (1914) 1 Ch. 198.

Common interest—Trade unions—action for slander by way of office, by officer—Indemnity for costs—Ultra vires.

A common cause is not a common interest. The fact that a trade union officer is slandered by way of his office and the trade union is adversely affected by the slander does not give it a common interest in law in the action by the officer for damages. It was accordingly held in this case that the corporation in giving an indemnity to the officer before the action was instituted for the costs of the action was guilty of a tortious act and payments made in pursuance of such indemnity were illegal and could not bind the union. It was also held that the maintaining of such actions was not within the powers of the trade union express or implied.

Mash v. Darley (1914) I K. B. 1.

Evidence—corroboration—Conviction under Bastardy Act—Proof

In a proceeding under s.4 of the Bastardy Law's Amendment Act, the evidence of a police officer who proved that he was present at the trial and the conviction of the accused, was admitted as corroboration of the evidence of the complainant. *Held* that the conviction was presumptive proof of the comminsion of the crime. *In re* Crippen [1] followed. Where it is not necessary to prove conviction, but evidence of a conviction is offered by the complainant as part of the evidence in support of the case, the evidence of a person who was present is sufficient. The evidence is also admissible as evidence of the opinion of the jury expressed in the presence of the accused.

Holmes v. Pipers Limited (1914) I. K. B. 57.

Merchandise Marks Act—False Trade Description.

Some persons sold under the name of " Fine British Teragona wine " what was really a mixture of a wine made and prepared in England from dried raisin and a small quantity of mistella, a kind of wine made and used for blending purposes and not suitable for consumption. *Held* that they were guilty of the offence of giving a false trade description under S. 3 of the Merchandise Marks Act (50 and 51 Vict Ch. 28.)

Rex v. Simpson 1914 I. K. B. 66.

Certiorari—Acquittal—Maxim "Nemo debet bis vexari pro et eadem causa" —Judge disqualified by statute—Coal Mines Act.

1. (1911) P. 108

Two persons were charged with an offence under the Coal Mines Act. They were tried by two Magistrates as a court of summary jurisdiction, and acquitted. One of the Magistrates was a person employed in the Mine and under s. 103 he could not have acted as a justice unless with the consent of both parties. This fact was not known to the prosecutor at the time. *Held* on an application for a certiorari to quash the order of acquittal that the maxim nemo debet bis vexari applied and certiorari, ought not to be granted.

Rex *v.* **Tho Governor of Brixton Prison: Exparte Servini** 1914 I. K. B. 77.

Extradition—Order in Council—Omission to prove—Habeas corpus, Extradition Act, 1870 (33 *and* 34 *Vict. Ch.* 52).

A Magistrate committed a fugitive criminal to prison with a view to his extradition to Italy. The order in council applying the Extradition Act to Italy was not formally proved before the Magistrate he being aware of its existence. A rule nisi for a writ of Habeus corpus was issued on the ground that the Magistrate had no jurisdiction to commit without proof of the order in Council *Held,* discharging the rule that the pure omission to prove formally the order in Council does not entitle the prisoner to be released though it is generally important that the order in council should be proved.

Royal College of Veterinary Surgeons *v.* **Kannard** 1914 **I. K. B.** 92.

Veterinary Surgeon— Use or description by an unqualified person—canine surgery—Veterinary Surgeon's Act—45 and 46 Vict. Ch, 62) 1871.

By the Veterinary Surgeons Act, S. 17 (1) any person who not possessing the prescribed qualification takes or uses the title of Veterinary Surgeon or practitioner or states that he is specially qualified to practice the same shall be liable to a fine. An unqualified person placed over his door a plate bearing the words '*canine surgery.*' *Held* that the words did not amount to a statement or description that he was specially qualified to practice the same and therefore he was not liable to fine.

Nicholls v. Evans 1914 I. K. B. 118.

Gaming—Cheque for racing debts—Payee paid cheque into bank—Action against payee for money—Whether payee holder and Bank endorsee.

Sec. 2 of the Gaming Act provides that in case any person shall make draw give or execute any note bill or mortgage for any consideration on account of which the same is by hereinbefore acts declared to be void and such person actually pay to any indorsee holder or assignee of such note bill etc., the amount of money so paid shall be deemed and taken to have been paid for and on account of the person to whom such note bill or mortgage was originally given upon such illegal consideration as aforesaid and shall be deemed and taken to be a debt due and owing from such last mentioned person and shall be recoverable from such person by action at law. The plaintiff in payment of certain gaming debts gave some crossed cheques to the defendant who indorsed the same and paid into his bank.

The plaintiff then sued to recover the amounts, under s. 2 of the Gaming Acts.

Held that the defendant was not a holder within the meaning of s. 2 of the Act, and that as the bank merely collected the amount for the defendant it was not an indorsee.

Quaere whether plaintiff could have recovered the amount if defendant had paid the cheques to his bankers in the character of holder in their own right and not in the character of agents for collection.

I*n re* **the Vexatious Actions Act** 1896 I*n re* **Boaler** 1914 I. K. B. 122.

By s. 1 of the Vexatious Actions Act it shall be lawful for the Attorney General to apply to the High Court for an order if he satisfies the court that any person has habitually and persistently instituted vexatious legal proceedings, whether in the High Court or in any court and that no legal proceedings shall be instituted by that person in the High Court or any other court unless he obtains the leave of the High Court and satisfies that the legal proceeding is not an abuse of the process of the court. On the motion of the Attorney-General a Division court ordered that no legal proceedings should be instituted by B, unless

he obtained the leave of the court. *Held* that "legal proceedings" in the section do not include criminal proceedings and that the order was no bar to an application to a Magistrate for a summons or to the presentment of an indictment to a grand jury in respect of misdemeanours. Darling, and Lush JJ. (Bankes J. dissenting.)

Rex *v.* **Lowden** 1914 I, **K. B.** 144

Stamps—Sale of forged stamps—Cancelled before sale—whether offence.

S. 13 of the Stamp Duties Management Act 1891 enacts that "any person who knowingly sells or exposes for sale or utters or uses a forged stamp shall be guilty of felony." A person who sells a forged stamp commits an offence notwithstanding that the stamp may have been cancelled before sale.

In interpreting a statute we must consider that the Parliament intended the words used to mean what they appear to mean and so a stamp even though cancelled does not cease to be a stamp under the Act.

Furtado *v.* **City of London Brewery Co.** (1914) I. K. B. 152.

Interpretation—Provision Ex Majore cautela—Effect of on another provision in itself clear—Appeal, what is—Income tax assessment —Application for relief to Commissioners.

" A provision put in possibily ex majore cautela in one clause of an act cannot have the effect of changing the interpretation to be put on the language of another clause if the language of the latter is clear " Scrutton J.

An appeal implies that the decision appealed against is wrong. An application to the Commissioner of Income tax on the assessment of profits made for income tax purposes, for relief on the ground of loss of profits for the year is not an appeal on the assessment and so no case can be stated by the Commissioners.

In the Estate of Hall : Hall *v.* **Knight and Baxter. 1914 P. 1.**

Will—Legatee convicted of manslaughter of testator—Forfeiture of right—Public policy.

The rule that a person who is guilty of the murder of another person cannot take any benefit under that person's will is based upon public policy and forms part of the common law of the land. The rule applies equally to a case of manslaughter. A legatee who had been convicted of the manslaughter of her testator is not entitled to apply for probate of the will.

JOTTING AND CUTTINGS.

The New City Judge—Mr. Atherley Jones has, in accordance with expectation, been appointed to succeed Judge Lumley Smith as a Judge of the City of London Court. It is an appointment which will be generally regarded as a fitting one. Mr. Atherly Jones, though he has been an active member of the House of Commons for more than twenty-five years, has always preserved his independence of judgment; he has never belonged to the ranks of the politicians who 'always voted at their party's call, And never thought of thinking for themselves at all.' He has, moreover, displayed a special interest in branches of the law which he will frequently have to deal with at the City of London Court. He is the author of well-known works on international law and commerce in war; while his experience as Recorder of Newcastle will be of much service to him in the administration of justice at the Old Bailey *Law Journal.*

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The Final Source of British Justice.—Whatever the legitimate desires of the self-governing dominions for restricting the right of the appeal to the King in Council, there can be no doubt that the power of the King to grant of his grace a special leave to appeal to himself from a criminal judgment of any court in the Empire is one of the great pillars of British justice. Six months ago the Judicial Committee quashed a conviction for murder which had been upheld by a High Court in India, and prevented a very grave miscarriage of justice (*Vaithinatha Pillai* v. *The King Emperor*), and more recently it has been called upon to quash a criminal judgment which was passed in circumstances that offend against the first principles of our law, and which, if left undisturbed, would have done grievous wrong. The appeal (*Lanier* v. *The King*) was brought from a judgment of the Supreme Court of the Seychelles, which had convicted the appellant of the embezzlement of moneys entrusted to him as guardian of a minor,

and sentenced him to eighteen months' imprisonment. An appeal lies from the Court to the Supreme Court of Mauritius in a criminal case where the penalty imposed is of two years' imprisonment or more, but as the Judge had refused to increase the sentence so as to make it appealable, the only means of relief open to the convicted man was the King's grace. It is only in extreme cases, where the principles of natural justice appear to be infringed that the Privy Council will interfere with a penal judgment, but here the Board was so impressed with the wrong which had been done that they gave the appellant costs against the Crown, following the precedent laid down in the case of *In re Johnson* (1900), where it was held that the Crown should be treated as any other litigant in regard to costs of appeals. The appellant had, it is true, mixed trust moneys with his own business capital, but when called upon by the family council of the insured to adjust the accounts he had straightway done so. His conduct at most justified only civil proceedings, and yet he was subsequently prosecuted at the instance of the acting chief Judge of the colony, who, though he had been president of the family council, yet tried the case and passed the sentence. There was an additional circumstance of oppression in the case in that the Judge refused to adjourn the trial so that the accused might be assisted by counsel. The whole conduct of the prosecutor, indeed, was opposed to the spirit of British justice; and the powers of the King to secure fully for his individual subjects, however remote from the centre of the realm, the application of that spirit is one of the blessings of British citizenship.—*Ibid.*

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Indemnification of Bail.—An agreement to indemnify any person for giving bail on behalf of another is, of course, under English Law an indictable offence (*Rex* v. *Porter* (1910) 1 K.B. 369).—*Ibid.*

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Treasure Trove and Legal Aid:—During the last few months there have been two discoveries of buried treasure, and in one of the cases, as no claimant at the coroner's inquest which was held upon the find could successfully establish his title, the royal prerogative was enforced. The treasure, which was found by a workman near St. Helens, consisted of gold coin of recent date,

and several persons who had suffered from robberies presented themselves to urge their claims to it, but they failed to prove the identity of the hoard with their loss. And where there is no certain owner the King is deemed to have the property in anything found in the realm. In the other case, where the find was of a quantity of silver plate near Cardiff, a rightful owner did appear, who proved that the articles had been stolen from a mansion in the neighbourhood. In most foreign legal systems treasure-trove is divided between the owner of the land on which it is found and the finder; but in England the ancient royal prerogative has been preserved intact, though the proceeds of it no longer go to swell the private wealth of the sovereign, but fall into the Consolidated Fund of the national Exchequer. The most important elements of the *bonavacantia* which are thus appropriated by the State are the unclaimed estates of intestates leaving no known next of kin. These windfalls amount annually to a considerable sum, which would more than suffice to cover the cost of a State-aided system of legal aid for the poor. It is one of the most striking prerogatives of the King that he is *pater patriae* the general protector of his subjects and the guardian of charity, and it would be fitting that the prerogative over ownerless property in the Kingdom should be employed to extend the exercise of the prerogative of assisting the poor. Several continental countries, as well as New Zealand and some of the States of the United States, have made the legal assistance of the needy litigant a charge on the Treasury; and if the law is to be, in application as well as in substance, equal, it is fitting that a similar step should be taken in England. The ear-marking for this specific purpose of a sufficient portion of the unexpected accession of wealth which falls to the Crown would not impose any burden on the national revenue, and would do much to increase the general contentment in the administration of Justice.—*Ibid.*

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Miscellany:—Though all the Chief Justices of modern times, with the exception of Sir Alexander Cockburn, have been Peers, Sir Rufus Isaacs (says the *Globe*) enjoys the distinction of being the first, Chief' for eight years to be raised to the House of Lords during his tenure of office. Not since Denman was made a Peer in 1834 has a Lord Chief Justice been ennobled. All Denman's noble and learned successors were raised to the Peerage

in an earlier stage of judicial existence. The custom of Chief Justices being members of the Peerage did not become really settled until Lord Mansfield's day. His two immediate predecessors—Sir William Lee, who began to preside over the King's Bench in 1737, and Sir Dudley Ryder, who was appointed in 1754—were never raised to the House of Lords. The notorious Jeffreys, indeed, was the first Chief Justice to be made a Peer during his occupancy of the office.—*Ibid.*

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A New Law Lord:—The supreme appellate tribunal, to which two additional Lords of Appeal in Ordinary were recently appointed, is to be further strengthened by the voluntary services of Lord Parmoor. The qualities which enabled Sir Alfred Cripps—it is still difficult to write of him without using his old name—to gain so distinguished a place at the Bar should enable him to render the Empire the most valuable service as a Law Lord. A member of the Judicial Committee of the Privy Council is the occupant of a 'high judicial position' within the meaning of the Appellate Jurisdiction Act, 1876, and Lord Parmoor will, it is to be presumed, acquire his eligibility to take part in the judicial work of the House of Lords by being appointed to one of the unpaid positions on the Judicial Committee. Lord Haldane, in announcing Lord Parmoor's public-spirited desire to sit as a Law Lord, stated that the Imperial Court of Appeal would have, with the accession of Lord Parmoor, a dozen members accustomed to sit in both its divisions. It has become, indeed, a remarkably strong Court. In addition to the six Lords of Appeal in Ordinary—Lord Atkinson, Lord Shaw, Lord Moulton, Lord Parker, Lord Dunedin, and Lord Sumner—there are the Lord Chancellor, Lord Halsbury, Lord Loreburn, Lord Mersey, Lord Kinnear, and Lord Parmoor. There are several other peers who are competent to sit. Lord de Villiers has occasionally done so, and Lord Alverstone will, it is sincerely hoped, so regain his strength that he will enable the country to enjoy the benefit of his large store of legal knowledge and experience in the highest court of the realm.—*Ibid.*.

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The Judicial Committee:—The Lord Chancellor and Lord Dunedin were the guests at a dinner held by the Society of Writers to His Majesty's Signet in Edinburgh on January 13,

The Duke of Montrose (Keeper of the Signet), in proposing the toast of 'The Guests,' said that the occasion was unique, because one of the guests they desired to honour was the first son of a Writer to the Signet who had reached the high position of Lord Chancellor, while Lord Dunedin's father was also a well-known and distinguished Writer to the Signet.

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Lord Haldane said his life had been a somewhat miscellaneous one. He had been a War Minister, he had been a Gifford Lecturer, he had been despatched on delicate diplomatic missions over which the curtain must be drawn, and, finally, had returned to his own business of the law, and one of the pleasures he had experienced was that a wish which he had from the beginning when he received the Great Seal had been fulfilled; he had had a covetous eye on Lord Dunedin, the President of the Court of Session in Scotland, and he never rested until he persuaded the Prime Minister to persuade Lord Dunedin to join the supreme tribunal. It was a great tribunal which sat substantially in two divisions in London, administering justice for the entire Empire, and when he looked back there was something comforting to think of the difference in numbers and in strength between a year ago and to-day. It had always been one of his ambitions to have something to do with making that tribunal the greatest that the world had ever seen, and he was not sure that it was not that already. But there was still more to be done. The work was unending with an Empire like ours. A year ago they were so short of numbers that they could barely man two courts of three each at the same time for the service of the House of Lords. They had got an Act through last session, however, which had raised the number of Law Lords from four to six. There was now a further accession in that great lawyer, Sir Alfred Cripps, who, with the utmost public spirit, no longer desired to add to his fortune at the Bar, but had expressed the wish to devote himself to judicial work, and was now about to join them in the supreme tribunal of the Empire. That accession gave them twelve Law Lords. They had got the substance that they had long been denied for the supreme tribunal, and they could man without difficulty two great courts of five members each, which to his mind was the perfect number. The Empire was held together by three links,

the Crown, defence, and the administration of justice. If a change in the Second Chamber were made in any form which he new nothing of, whether in the shape of Lord Lansdowne's Bill or in the shape of those nebulous ideas of which he knew very little, it would be extremely difficult to retain the appeal to the House of Lords in the form in which it existed at the present time. The thread of tradition and of the Constitution would be gone, and the appeal would have to be to the King, not to the King in Parliament, but to the King properly and constitutionally advised. The advantage of the present situation was that, with the size and strength to which the Imperial tribunal has now reached, it would be the merest change of form whatever happened. Whether anything happened or not, it did not very much matter from the point of view of substance, but if it did happen it would happen without much difficulty. Just as hitherto the appeals had lain to the King either in Parliament or in Council, so it would be natural that the appeals should in future be to the Sovereign in Council. With regard to the Dominions Overseas it might be enacted in a short Bill that the Judicial Committee of the Privy Council might sit in more than one division; that the present Judges of the House of Lords would sit in one division and the Judges and Privy Council in another, and it would be theoretically possible for a division to be organised to sit, if necessity so demanded, in some distant Dominion of the Empire. But he had never thought for a moment that they could have the supreme tribunal of the Empire anywhere else than in the Metropolis of the Empire. At the same time it was right in principle that he should emphasise that the supreme tribunal was not local but Imperial; that, like the person of the Sovereign, it was everywhere throughout the Empire; and in theory, at all events, that great body might be able to go in a division specially constituted to determine a dispute concerning a boundary or something requiring local knowledge. There, it seemed to him, they had the natural evolution of their unwritten constitution, and an evolution which might take place without difficulty.—Ibid.

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Refusal to Plead.—It is not very often nowadays that a prisoner 'stands mute,' *i.e.*, refuses to plead on arraignment to the indictment against him. A case of this kind, however, occurred

on Tuesday at the Old Bailey (*Rex* v. *James Doran*). Doran was indicted before the Recorder on a charge of forging and uttering a letter requesting a bank to pay him the sum of 220*l*. When he was called upon to plead his counsel stated that he had advised the prisoner not to plead upon the indictment in order that he might be in a position to take before the Court of Criminal Appeal a technical objection under the Criminal Procedure Act, 1851, relating to the postponement of trials from one session to another. The precise nature of the point desired to be taken was not sufficiently indicated for comment here, but no doubt will be argued fully upon the appeal. Counsel's reason for advising refusal to plead, however, was possibly based on a consideration of the now celebrated case of *Rex* v. *Banks* ([1911] 2 K.B. 1095), commonly known at the Criminal Bar as 'the *Autrefois Acquit* case'. There a prisoner, after pleading not guilty to an indictment for manslaughter, added a plea of *autrefois acquit* —namely, that a coroner's inquisition against him for murder of the same person had been dismissed by the jury, the prosecution offering no evidence upon it. After three sittings to consider the difficulties presented by this point, the Court of Criminal Appeal held that, once a plea of not guilty is entered, special pleas in bar cannot be taken so long as the first plea remains on the record. In other words, the prisoner must elect between his special plea and the plea of not guilty—he cannot take both. We presume that it was in order to avoid some difficulty of this kind that counsel in *Doran's Case* advised his client to 'stand mute.' Once upon a time, of course, such conduct was common. Prisoners liable to forfeiture of property on conviction preferred to save their goods and chattels for their families by refusing to plead, They were then put to the '*peine forte et pure*,' *i.e.*, pressed to death unless they consented to plead. The barbarous practice was abolished in 1772 (12 Geo. III., cap. 20), and by a later statute (7 & 8 Geo. IV., cap. 28) the Court is directed to enter a plea of, 'not guilty' if the prisoner is mute 'of malice,' and not 'by the visitation of God.' This course the Recorder followed in *Doran's Case*. Ibid.

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A Tribute to the Attorney-General.—Sir Edward Clarke, K.C., said he had very special reasons for satisfaction in the fact that he was permitted at that meeting of the Bar to move a vote of

thanks which he had very frequently moved to the Attorney-General who had presided over these meetings. The Attorney-General who presided to-day was one with regard to whose career and whose present position the Bar of England might feel a proud satisfaction. He had come very early to his high position. His years at the Bar had not been long as measured by those of some who were present at that meeting, but he had come to his great position with the unanimous approval of the whole profession. No man ever accepted that office who was more competent to fulfil its duties or who gave greater promise to the profession and the public of being a worthy servant of the community. His memory of the House of Commons, from different points of view, went back 50 years, and he looked back to the time when from the gallery of the House of Commons he heard the duels between Sir Hugh Cairns and Sir Roundell Palmer. In his belief, there had not been a time in all this period when the two front benches of the House of Commons had been more brilliantly represented by members of the Bar than they were at this moment. He had entire confidence in the great services that the Attorney-General would render. He only hoped he would not work too hard, so as to prematurely age that charming personality in which all his friends delighted. With that expression of a desire, which he trusted the Attorney-General would remember as a hint, he asked his brethren of the Bar to join in thanking him for his attendance there that day.

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Mr. Boydell Houghton, who seconded the motion, said they were always pleased to have the Attorney-General presiding over their annual meetings, but they were specially pleased to have the new Attorney-General there that day, because, as Sir Edward Clarke had said, they were all proud of him and rejoiced in his brilliant and successful career at the Bar.

The motion was carried with acclamation.

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The Attorney-General, in reply, said he thanked his old friends Sir Edward Clarke and Mr. Boydell Houghton very heartily for the too kind things they had been good enough to say, and he thanked the meeting very sincerely for the generous warmth with which they had accepted their proposition. He knew that the Bar of England was the most generous profession in the world.

The Resignation of Mr. Justice Bucknill.—Mr. Justice Bucknill, who proposed to resign at the close of the Michælmas Sittings, when he completed fifteen years of judicial service, but who postponed his resignation with the object of facilitating the removal of the arrears in the Court of Appeal, has been compelled by ill-health to fulfil his original intention of not returning to the Courts. His retirement will be sincerely regretted by the members of both branches of the profession. He has been a very human judge. It is not by any special qualities of legal learning that Mr. Justice Bucknill has gained the high regard in which he is universally held. Probably he would have made a deeper mark as a judge in the Probate, Divorce and Admiralty Division, where he practised before he was promoted to the Bench, and where he has not infrequently sat when help from the King's Bench staff has been required. It is by the conspicuous gifts he has displayed as a *Nisi Prius* judge—his keen sense of fairness, his painstaking industry, his judicial good humour, his breeziness of temperament—that he has won the wide popularity he enjoys. The man has never been lost in the judge, nor, let it be added—for he has never been lacking in dignity—has the judge been lost in the man. We trust that, quickly regaining his strength, he will long continue to enjoy those country pursuits of which there has always been an agreeable suggestion in his judicial bearing. Ibid.

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British Law and Colonial Agitators.—The South African Government is cheerfully engaged in raising as many as possible of the yet undecided points in constitutional law, and to the jurist many fascinating problems arise out of its latest action. The deportation of ten Labour leaders, without trial under martial law or under the ordinary law of the country, actually carried out by decree of the Executive while a judge had cognizance of this proposed illegal step, is certainly a very grave infringement both of constitutional law and of the respect due to Civil Courts. But, so far as the South African Government is directly concerned, no doubt a local Act of Indemnity passed by the Union Parliament at the Cape will relieve them of all liability. But how stands it with the owners and master of the good ship *Umgeni*, which took the exiles on board and is carrying them on a journey to London? This acceptance of the agitators on

board against their will is an assault and false imprisonment; as such it is both a tort and a crime. The *Umgeni* is a vessel of the Natal Line and flies the English flag; in other words, she is British territory and, as was decided in *Davidson* v. *Hill* only a few years ago (1901), the English courts have jurisdiction to try all torts committed on board such a ship. If, then, the master and his owners are sued in England, have they any answer? A local Act of Indemnity cannot protect the master except so far as his illegal actions took place in a South African port or within the territorial waters—*i. e.*, three miles off the South African shores; for on the high seas the Union Parliament has no jurisdiction. But the false imprisonment is a continuing tort; it is not completed with the first act of assault, but with the final act of detention preceding release. Hence a tort has been committed on the high seas, and so is outside any Act of Indemnity of the Cape Legislature. Again, can the master of the ship plead duress—that his hand was forced by the South African Government? Duress is a question of fact, and, according to the *Times*, there is reason to believe that the ship was specially chartered to the Cape Government by its Natal agents for this service—in which case any plea of duress is beside the question. But even in the absence of such an agreement, and even if the master acted under pressure, such conduct as is suggested on the part of the South African Executive seems scarcely 'duress' sufficient to excuse a tort or a crime. The whole situation promises a series of interesting problems in practical jurisprudence for the edification of our Courts. Ibid.

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Conscientious objections by Jurymen.—To what extent ought courts of law to exempt a juryman from service because of a 'conscientious objection' on his part to some element in our criminal law? No such ground of exemption, of course, can be legally claimed; but where a *bona fide* objection of this kind exists it is rather unsatisfactory to retain a juryman against his will on the panel. In the murder trial of *Rex* v. *Ball and Eltoft*, which has taken place at Liverpool, Mr. Justice Atkin released from the jury one of its members who satisfied him that he had a conscientious objection to capital punishment. Some years ago Mr. Justice Kennedy, as he then was adopted a similar

course at the Old Bailey, and in one of the militant suffragette prosecutions Lord Coleridge excused a juror who explained that he could not conscientiously condemn the actions of those ladies. Public opinion, no doubt, would approve of exemption in such cases, but the difficulty is to know where to stop. A juryman who believes that the law requires amendment in some detail can scarcely be excused from service in any case involving that reform merely because of his views. Happily, in practice jurymen are usually people of sound common sense, who hold normal views, and therefore the 'conscientious objector' is not often seen in the jury-box. *Ibid.*

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Contempt of Court.—Great uncertainty has long prevailed as to the precise limits of the offence known as contempt of court when committed by the publication in the press of matter affecting the trial of a pending action. It is generally agreed that the publication of comments which tend to prejudice the fair trial of any action is a serious contempt, but three points remain in great doubt. First, as to what trials the principle extends. Criminal trials, of course, are protected; so are civil trials by jury whether in the King's Bench or the Probate Division of the High Court; but how far comment is forbidden upon pending litigation in Chancery or before a judge, unassisted by a jury, in other Divisions, is still not a settled point. On an application last Tuesday in the case of *Leslie-Melville* v. *Leslie-Melville, Platt and Fitzwilliam,* a pending divorce trial, Mr. Justice Horridge (sitting as an additional judge of the Probate, Divorce and Admiralty Division) applied this principle to a cause entered in the special jury list of the Divorce Court. Secondly, to what extent is the publication of collateral matter about a party to a pending action, without direct reference to the subject matter of the litigation, a contempt? In the case in question a society newspaper published a 'smart paragraph' about a peer well known to be the co-respondent in the pending divorce suit, and gave a picturesque account of his career certainly calculated to impress any juryman who happened to read the article with an unfavourable view of that nobleman's moral standard. Mr. Justice Horridge held that such an article, being undoubtedly calculated to prejudice the fair trial of the case, amounted to a serious interference with the course of justice, and was a

contempt. Again, it is well settled that in cases of this kind there must be a serious, and not merely a technical, interference with justice before the Court will intervene and treat such interference as a contempt (per Lord Justice Collins in ***Hunt*** v. *Clarke*, 58 L.J., Q.B. 490). The liberty of the Press would be unduly fettered if frivolous applications were encouraged in merely nominal contempts. But it is not always easy to say what is a serious interference with the course of justice. In the present case the co-respondent held a high station in society, so that comments upon his pending case would naturally be widely read by the public at large, including possible jurymen. And Mr. Justice Horridge, taking a most serious view of the contempt, committed the director of the paper, whom he regarded as personally responsible for thearticle, to prison ***sine die***, until he should satisfy the Court that he had purged his contempt Ibid.

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Judicially determined.—A South Dakota correspondent sends us the following:

" It was in a Black Hills court. Time, frontier days, Case, *State of South Dakota* v. *Peter Larson.* Charge, grand larceny, of the 'doctered-brand' variety.

" All day long the prosecuting attorney, who was something of an old legal fossil, had, like the football hero, 'wandered round the end,' but had never quite managed to strike the centre of his case. The defendant's attorneys were alert and taking every possible advantage of the missteps of the prosecution. The Court, with ill-concealed disgust at the lambering method, or lack of method, on the part of the prosecutor, had from time to time taken a hand in the state's case. This course, instead of gaining the gratitude of the state's attorney, aroused his ire. Finally the Court assisted in framing a question directed at a witness, so as to forestall an objection from the defence.

" The Court must think that I don't know to examine this witness ," blurted out the prosecutor.

" The Court thinks the prosecuting attorney is not only ignorant but also egotistical," snapped the judge.

" Is that a—a judicial determination of the Court ? " stammered the old prosecutor, somewhat taken aback.

" If the matter was properly before this Court, it would certainly so hold. Proceed with the case. "

The Green Bag.

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Father and Judge—Hon. " Ollie " James, the giant Senator from Kentucky, told this story of a Kentuckian holding the office of trial justice in that state.

His own son was once brought before him on a charge of drunkenness and disorderly conduct. His Honor listened gravely to the evidence, which established a clear case against the young man, and said:

" The Court will now render sentence. You're fined one cent and costs. The Court will remit the costs, and you may go home and thank God that your father is the judge. "—*Ibid.*

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Lawyer—The cross-examination did not seem to worry you. Have you had any previous experience ? "

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Client—" Six childern " *Kansas City Star.*

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Counsel for the Defence (to client who has been dozing during the verdict)—"Wake up and get out. You're acquitted !"

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Accused—" Lor' lumme. Wot ! not guilty ? "

"*The Green Bag.*"

CONTEMPORARY LEGAL LITERATURE.

In the January number of the *Journal of the Society for comparative legislation* Professor Lee tells us how in British Guiana the Roman Dutch Law has been gradually superseded by the English law Mr. Charles Reis tells the same story about Spanish Law in Trinidad. It may interest the Indians to know that the Law in the latter country has owing to the introduction of immigrant labourers from India been to a certain extent influenced by the Indian Law, certain portions of which has been incorporated into the law of that colony.

The usual review of the legislation during the year 1912 also appears in this issue. *Egypt* seems to have had the largest legislative activity during the year. The statutes and decrees of the year

include provisions dealing with the administration of justice the condition of peasant proprietors and the preservation of antiquities. By an amendment of the Penal Code any person condemned to a term of imprisonment not exceeding 3 months is given the option of serving his sentence outside the wall of the prison. By another provision, usury is made an offence. A new article in the Civil Procedure enables the Government to resort to arbitration when questions arise on contracts for public works. Another law confers the right of interpellation on the members of the legislative Council. A comprehensine regulation has also been passed as to advocates their qualifications, recruitment etc. A *Homestead* Law exempts the holdings of small proprietors from seizure for debt. The important Legislation in *France* is that which gives putative children under certain circumstances the right to have their natural paternity declared against the father. If the claim is *mala fide*, the Court is given power to punish the claimant in addition to condemning him to pay the costs of the other side. By four international conventions, *Germany* has declared the Law as to the effects of marriage on property where there is a conflict of laws. During the year, Russia has organised a system of elected and salaried justices of the peace and has followed the lead of other European countries by making legal provision for the relief of workmen during sickness and for imposing on their employers the duty of insuring them against accidents. The feeling against Jews appears to be very strong and they are declared ineligible to serve in Peasant Courts. A reform seems also to have been introduced in the matter of women's rights of inheritance. Under the former law, a daughter where there were also one or more sons inherited only one fourteenth of the immoveable and one eighth of the moveable property left by the parents and had no right of inheritance to property left by a brother or sister if there was a brother surviving. The new law equalises the rights of sons and daughters in the first case and brothers and sisters in the second, inheritances being divided among them in equal shares except in the case of rural land of which each daughter, if there are sons each sister if there are brothers has the right only to a seventh part. *Australia* attempted an amendment of the constitution in several important respects but failed on the referendum. By the Immigration Act 1912, power is

given to establish medical bureaux at places outside the commonwealth and also to prevent people who are unhealthy from entering the Dominions. An act of New South Wales establishes an industrial court of arbitration. An amendment of extensive character is made in the Criminal Code of Western Australia by providing for preventive detention and for a Criminal Court of appeal. In certain classes of crimes *e.g.*, murder, grievous hurt, and offences against morality (rape, abduction incest etc.,)a person twice convicted, and in the case of certain other crimes stealing robbery etc., when thrice convicted, the court is given power to sentence the man to preventive detention *i.e*,, he is kept in confinement subject to less rigorous discipline than other criminals and is required to pursue some calling or other the proceeds of which will be applied towards the maintenance of himself and his dependants. The Governor may at any time allow the criminal his liberty or license but as a condition for such liberty, the criminal must place himself under the supervision of a society or person willing to take charge of him. The license may be revoked at any time by the Governor. If after being let out, the man is of good behaviour for three years, he is absolutely set free. The Act providing for criminal appeals while following closely the lines of the English Act gives the Court of appeal power to order a new trial which the English does not give. *New Zealand* has passed an Act giving power to the Supreme Court to appoint guardians to the person and property of a person who by reason of age, sickness, mental infirmity or excessive use of alcoholic liquor is unable wholly or partially to manage his affairs. *South Africa* has passed a comprehensive Irrigation Law which invites comparison with the system in India. A curious ordinance in *Nysaland* is directed against the attempt of the native to avoid payment for two huts by keeping both his wives in the same house by requiring a separate hut tax for each wife. *Manitoba and British Columbia* have thrown open the legal profession to women.

When does the violation of a criminal statute make the wrongdoer civilly responsible ? Professer Thayer of Harward considers this question in the *Harward Law Review for February* in an article headed "Public Wrong and Private action." He considers two kinds of statutes—statutes prohibiting action such as health laws, traffic ordinances, speed limits and other police regulations,

and statutes requiring certain affirmative action *e.g.*, imposing the duty to remove snow from walks etc. He thinks that in the case of all statutes prohibiting action, the effect of the statutes is to make their violation as a matter of law a falling off from the degree of care a reasonable man ought to take, whereas that was a matter for the consideration of the jury in each case formerly in other words—any person injured by their violation is entitled to claim damages against the wrongdoer. In the latter class of cases, he would make certain distinctions. If the duty was a common-law duty and the legislature only regulated it, the cause of action of the party would not be affected by the statutes. Then again, statutes which appear to require an affirmative act are often only prohibitive statutes. In such cases, the rule stated above will apply. Barring these two cases he thinks that it is dangerous for courts to speculate as to unexpressed legislative intent and create private remedies by implication.

Mr. Willes B. Perkins gives a history of the reform of procedure in England and America. He says that up to the time of Bentham, people hardly realised the significance of the distinction between substantive law and procedure. English lawyers thought forms of action were of equal importance with the substance of the rights. The first recognition of his principles was in America in the state of Louisiana. His attempt to simplify and rationalise procedure was opposed by the conservatism of lawyers. The opinion of the first commission in 1831 was that the existing rules of common law pleading were founded "in strong sense and closest logic " and so appeared when well understood and explained." The so-called Hilary rules of court and some partial changes in Chancery practice were all the result. In 1848, the New York Civil Code was passed and this roused the English Legislature to action. Various statutes reforming procedure were passed during the years 1852 to 1872. The first series, known as the Common Law Procedure Acts established a reformed system of pleading at law—the second series reformed equity pleading. They marked a great advance in the direction of reform. Forms of action were simplified and many fictions formerly required to be set forth in pleadings were abolished. More significant than these, many equitable defences were permitted in actions at law. These Acts were followed by many of the American States. But they fell